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## SEC. 1. FINDINGS AND PURPOSE (15 U.S.C. 271)

(a) The Congress finds and declares the following:

(1) The future well-being of the United States economy depends on a strong manufacturing base and requires continual improvements in manufacturing technology, quality control, and techniques for ensuring product reliability and cost-effectiveness.

(2) Precise measurements, calibrations and standards help United States industry and manufacturing concerns compete strongly in world markets.

(3) Improvements in manufacturing and product technology depend on fundamental scientific and engineering research to develop (A) the precise and accurate measurement methods and measurement standards needed to improve quality and reliability, and (B) new technological processes by which such improved methods may be used in practice to improve manufacturing and to assist industry to transfer important laboratory discoveries into commercial products.

(4) Scientific progress, public safety, and product compatibility and standardization also depend on the development of precise measurement methods, standards, and related basic technologies.

(5) The National Bureau of Standards since its establishment has served as the Federal focal point in developing basic measurement standards and related technologies, has taken a lead role in stimulating cooperative work among private industrial organizations in efforts to surmount technological hurdles, and otherwise has been responsible for assisting in the improvement of industrial technology.

(6) The Federal Government should maintain a national science, engineering, and technology laboratory which provides measurement methods, standards, and associated technologies and which aids United States companies in using new technologies to improve products and manufacturing processes.

(7) Such national laboratory also should serve industry, trade associations, State technology programs, labor organizations, professional societies, and educational institutions by disseminating information on new basic technologies including automated manufacturing processes.

(b) It is the purpose of this Act--

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(1) to rename the National Bureau of Standards as the National Institute of Standards and Technology and to modernize and restructure that agency to augment its unique ability to enhance the competitiveness of American industry while maintaining its traditional function as lead national laboratory for providing the measurements, calibrations, and quality assurance techniques which underpin United States commerce, technological progress, improved product reliability and manufacturing processes, and public safety;

(2) to assist private sector initiatives to capitalize on advanced technology;

(3) to advance, through cooperative efforts among industries, universities, and government laboratories, promising research and development projects, which can be optimized by the private sector for commercial and industrial applications; and

(4) to promote shared risks, accelerated development, and pooling of skills which will be necessary to strengthen America's manufacturing industries.

## SEC. 2. ESTABLISHMENT, FUNCTIONS, AND ACTIVITIES (15 U.S.C. 272)

(a) There is established within the Department of Commerce a science, engineering, technology, and measurement laboratory to be known as the National Institute of Standards and Technology (hereafter in this Act referred to as the `Institute').

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(b) The Secretary of Commerce (hereafter in this Act referred to as the `Secretary') acting through the Director of the Institute (hereafter in this Act referred to as the `Director') and, is appropriate, through other officials, is authorized to take all actions necessary and appropriate to accomplish the purposes of this Act, including the following functions of the Institute--

(1) to assist industry in the development of technology and procedures needed to improve quality, to modernize manufacturing processes, to ensure product reliability, manufacturability, functionality, and cost-effectiveness, and to facilitate the more rapid commercialization, especially by small- and medium-sized companies throughout the United States, of products based on new scientific discoveries in fields such as automation, electronics, advanced materials, biotechnology, and optical technologies;

(2) to develop, maintain, and retain custody of the national standards of measurement, and provide the means and methods for making measurements consistent with those standards;

(3) to compare standards used in scientific investigations, engineering, manufacturing, commerce, industry, and educational institutions with the standards adopted or recognized by the Federal Government and to coordinate the use by Federal agencies of private sector standards, emphasizing where possible the use of standards developed by private, consensus organizations;

(4) to enter into contracts, including cooperative research and development arrangements, in furtherance of the purposes of this Act;

(5) to provide United States industry, Government, and educational institutions with a national clearinghouse of current information, techniques, and advice for the achievement of higher quality and productivity based on current domestic and international scientific and technical development;

(6) to assist industry in the development of measurements, measurement methods, and basic measurement technology;

(7) to determine, compile, evaluate, and disseminate physical constants and the properties and performance of conventional and advanced materials when they are important to science, engineering, manufacturing, education, commerce, and industry and are not available with sufficient accuracy elsewhere;

(8) to develop a fundamental basis and methods for testing materials, mechanisms, structures, equipment, and systems, including those used by the Federal Government;

(9) to assure the compatibility of United States national measurement standards with those of other nations;

(10) to cooperate with other departments and agencies of the Federal Government, with industry, with State and local governments, with the governments of other nations and international organizations, and with private organizations in establishing standard practices, codes, specifications, and voluntary consensus standards;

(11) to advise government and industry on scientific and technical problems;

(12) to invent, develop, and (when appropriate) promote transfer to the private sector of measurement devices to serve special national needs; and

(13) to coordinate Federal, State, and local technical standards activities and conformity assessment activities, with private sector technical standards activities and conformity assessment activities, with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures.

(c) In carrying out the functions specified in subsection (b), the Secretary, acting through the Director and, if appropriate, through other appropriate officials, may, among other things--

(1) construct physical standards;

(2) test, calibrate, and certify standards and standard measuring apparatus;

(3) study and improve instruments, measurement methods, and industrial process control any quality assurance techniques;

(4) cooperate with the States in securing uniformity in weights and measures laws and methods of inspection;

(5) cooperate with foreign scientific and technical institutions to understand technological developments in other countries better;

(6) prepare, certify, and sell standard reference materials for use in ensuring the accuracy of chemical analyses and measurements of physical and other properties of materials;

(7) in furtherance of the purposes of this Act, accept research associates, cash donations, and donated equipment from industry, and also engage with industry in research to develop new basic and generic technologies for traditional and new products and for improved production and manufacturing;

(8) study and develop fundamental scientific understanding and improved measurement, analysis, synthesis, processing, and fabrication methods for chemical substances and compounds, ferrous and nonferrous metals, and all traditional and advanced materials, including processes of degradation;

(9) investigate ionizing and nonionizing radiation and radioactive substances, their uses, and ways to protect people, structures, and equipment from their harmful effects;

(10) determine the atomic and molecular structure of matter, through analysis of spectra and other methods, to provide a basis for predicting chemical and physical structures and reactions and for designing new materials and chemical substances, including biologically active macromolecules;

(11) perform research on electromagnetic waves, including optical waves, and on properties and performance of electrical, electronic, and electromagnetic devices and systems and their essential materials, develop and maintain related standards, and disseminate standard signals through broadcast and other means;

(12) develop and test standard interfaces, communication protocols, and data structures for computer and related telecommunications systems;

(13) study computer systems (as that term is defined in section 20(d) of this Act) and their use to control machinery and processes;

(14) perform research to develop standards and test methods to advance the effective use of computers and related systems and to protect the information stored, processed, and transmitted by such systems and to provide advice in support of policies affecting Federal computer and related telecommunications

systems;

(15) determine properties of building materials and structural elements, and encourage their standardization and most effective use, including investigation of fire-resisting properties of building materials and conditions under which they may be most efficiently used, and the standardization of types of appliances for fire prevention;

(16) undertake such research in engineering, pure and applied mathematics, statistics, computer science, materials science, and the physical sciences as may be necessary to carry out and support the functions specified in this section;

(17) compile, evaluate, publish, and otherwise disseminate general specific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere;

(18) collect, create, analyze, and maintain specimens of scientific value;

(19) operate national user facilities;

(20) evaluate promising inventions and other novel technical concepts submitted by inventors and small companies and work with other Federal agencies, States, and localities to provide appropriate technical assistance and support for those inventions which are found in the evaluation process to have commercial promise;

(21) demonstrate the results of the Institute's activities by exhibits or other methods of technology transfer, including the use of scientific or technical personnel of the Institute for part-time or intermittent teaching and training activities at educational institutions of higher learning as part of and incidental to their official duties; and

(22) undertake such other activities similar to those specified in the subsection as the Director determines appropriate.

(d) In carrying out the extramural funding programs of the Institute, including the programs established under sections 25, 26, and 28 of this Act, the Secretary may retain reasonable amounts of any funds appropriated pursuant to authorizations for these programs in order to pay for the Institute's management of these programs.

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### SEC. 3. FUNCTIONS: FOR WHOM EXERCISED (15 U.S.C. 273)

The Institute is authorized to exercise its functions for the Government of the United States and for international organizations of which the United States is a member; for governments of friendly countries; for any State or municipal government within the United States; or for any scientific society, educational institution, firm, corporation, or individual within the United States or friendly countries engaged in manufacturing or other pursuits requiring the use of standards or standard measuring instruments: Provided, That the exercise of these functions for international organizations, governments of friendly countries and scientific societies, educational institutions, firms, corporations, or individuals therein shall be in coordination with other agencies of the United States Government, in particular the Department of State in respect to foreign entities. All requests for the services of the Institute shall be made in accordance with the rules and regulations herein established.

#### SEC. 4. (REPEALED)

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#### SEC. 5. DIRECTOR OF THE INSTITUTE (15 U.S.C. 274)

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The Director shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall have the general supervision of the Institute, its equipment, and the exercise of its functions. The Director shall make an annual report to the Secretary of Commerce. The Director may issue, when necessary, bulletins for public distribution, containing such information as may be of value to the public or facilitate the exercise of the functions of the Institute. The Director shall be compensated at the rate in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code. Until such time as the Director assumes office under this section, the most recent Director of the National Bureau of Standards shall serve as Director.

#### SEC. 6. APPOINTMENT OF OFFICERS AND EMPLOYEES (15 U.S.C. 275)

The officers and employees of the bureau except the director, shall be appointed by the Secretary of Commerce at such time as their respective services may become necessary.

#### SEC. 7. SERVICE CHARGES (15 U.S.C. 275a)

The Secretary shall charge for services performed under the authority of section 273 of this title, except in cases where he determines that the interest of the Government would be best served by waiving the charge. Such charges may be based upon fixed prices or costs. The appropriation or fund bearing the cost of the services may be reimbursed, or the Secretary may require advance payment subject to such adjustment on completion of the work as may be agreed upon.

## ACTIVITIES PERFORMED FOR OTHER AGENCIES (15 U.S.C. 275b)

The Secretary of Commerce shall charge for any service performed by the Institute, at the request of another Government agency, in compliance with any statute, enacted before, on or after October 6, 1982, which names the Secretary or the Institute as a consultant to another Government agency, or calls upon the Secretary or the Institute to support or perform any activities for or on behalf of another Government agency, or cooperate with any Government agency in the performance of that agency of any activity, regardless of whether the statute specifically requires reimbursement to the Secretary or the Institute by such other Government agency for such service, unless funds are specifically appropriated to the Secretary or the Institute to perform such service. The Secretary may, however, waive any charge when the service rendered by the Institute is such that the Institute will incur only nominal costs in performing its. Costs shall be determined in accordance with section 12(e) of the Act of March 3, 1901, as amended [15 U.S.C. 278b(e)].

## COST RECOVERY AUTHORITY

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### COST RECOVERY

(15 U.S.C. 275c)

Fees for calibration services, standard reference materials, and other comparable services provided by the National Institute of Standards and Technology shall be at least sufficient to meet the requirements set forth in [15 U.S.C. 278b(f)], and any funds recovered in excess of such requirements shall be returned to the Treasury of the United States.

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NOTE: 15 U.S.C. 275 note DEMONSTRATION PROJECT RELATING TO PERSONNEL MANAGEMENT (Public Law No. 99-574)

The Office of Personnel Management and the National Institute of Standards and Technology shall jointly design a demonstration project which shall be conducted by the Director of the National Institute of Standards and Technology.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Institute of Standards and Technology which would otherwise be subject to-



- (A) subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;
- (B) subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or
- (C) chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Institute of Standards and Technology shall provide that-

- (1) the rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph (3)) within which such position has been placed;
- (2) the minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);
- (3) positions shall be classified under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;
- (4) employees shall be evaluated under a performance appraisal system which-
  - (A) uses peer comparison and ranking wherever appropriate; and
  - (B) affords appeal rights comparable to those afforded under chapter 43 of title 5, United States Code;
- (5)(A) the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and
- (B) subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;
- (6) appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;
- (7) performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances (but shall not be considered a part of basic pay);
- (8) there shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(C) of title 5, United States Code (excluding paragraph (2)(B) thereof);
- (9) payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and
- (10) the methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including-

- (A) basic pay;
- (B) bonuses;
- (C) allowances;
- (D) retirement benefits;
- (E) health insurance benefits;
- (F) life insurance benefits; and
- (G) leave benefits.

(2) The Director of the National Institute of Standards and Technology shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys-

(A) shall include findings as to-

(i) the extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(ii) with respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased so that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Institute of Standards and Technology receives a recommendation under paragraph (2)(B), the Director-

(A) shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of-

(i) the percentage recommended; or

(ii) the overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) if any to the extent that funds are available for that purpose, may further increase those minimum and maximum rates-

(i) to make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) after making up for the entirety of any difference determined under clause (i) (including from any previous year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section-

(i) the maximum rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) the amount of basic pay, bonuses, and allowance paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate, exceed the annual rate of basic pay payable for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump sum at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into account for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginning on October 1, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(6)(A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of basic pay payable to any employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid-

(i) in the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) in the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump-sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) For purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Institute of Standards and Technology.

(i) the Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) the Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

(2) The Comptroller General shall, not later than 4 years after the date on which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

The personnel management demonstration project established under section 10 of the National Bureau of Standards Authorization Act of Fiscal Year 1987 (15 U.S.C. 275 note) is extended indefinitely. (Public Law No. 104-113) (Technology Transfer Act of 1996)

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## SEC. 8. OWNERSHIP OF FACILITIES (15 U.S.C. 276)

In the absence of specific agreement to the contrary, additional facilities, including equipment, purchased pursuant to the performance of services authorized by section 273 of this title shall become the property of the Department of Commerce.

## SEC. 9. REGULATIONS (15 U.S.C. 277)

The Secretary of Commerce shall, from time to time, make regulations regarding the payment of fees, the limits of tolerance to be attained in standards submitted for verification, the sealing of standards, the disbursement and receipt of moneys, and such other matters as he may deem necessary for carrying this chapter into effect.

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#### SEC. 10. VISITING COMMITTEE ON ADVANCED TECHNOLOGY (15 U.S.C. 278)

(a) There is established within the Institute a Visiting Committee on Advanced Technology (hereafter in this Act referred to as the `Committee'). The Committee shall consist of 15 members appointed by the Director, at least 10 of whom shall be from United States industry. The Director shall appoint as original members of the Committee any final members of the National Bureau of Standards Visiting Committee who wish to serve such capacity. In addition to any powers and functions otherwise granted to it by this Act, the Committee shall review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

(b) The persons appointed as members of the Committee--

(1) shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations;

(2) shall be selected solely on the basis of established records of distinguished service;

(3) shall not be employees of the Federal Government; and

(4) shall be so selected as to provide representation of a cross-section of the traditional and emerging United States industries.

The Director is requested, in making appointments of persons as members of the Committee, to give due consideration to any recommendations which may be submitted to the Director by the National Academies, professional societies, business associations, labor associations, and other appropriate organizations.

(c) (1) The term of office of each member of the Committee, other than the original members, shall be 3 years; except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Any person who has completed two consecutive full terms of service on the Committee shall thereafter be ineligible for appointment during the one-year period following the expiration of the second such term.

(2) The original members of the Committee shall be elected to three classes of three members each; one class shall have a term of one year, one a term of two years, and the other a term of three years.

(d) The Committee shall meet at least quarterly at the call of the Chairman or whenever one-third of the members so request in writing. A majority of the members of the Committee not having a conflict of interest in the matter being considered by the Committee shall constitute a quorum. Each member shall be given appropriate notice, whenever possible, not less than 15 days prior to any meeting, of the call of such meeting.

(e) The Committee shall have an executive committee, and may delegate to it or to the Secretary such of the powers and functions granted to the Committee by this Act as it deems appropriate. The Committee is authorized to appoint from among its members such other committees as it deems necessary, and to assign to committees so appointed such survey and advisory functions as the Committee deems appropriate to assist it in exercising its powers and functions under this Act.

(f) The election of the Chairman and Vice Chairman of the Committee shall take place at each annual meeting occurring in an even-numbered year. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Committee shall elect a member to fill such vacancy.

(g) The Committee may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than four professional staff members and such clerical staff members as may be necessary. Such staff shall be appointed by the Director, after consultation with the Chairman of the Committee, and assigned at the direction of the Committee. The professional member of such staff may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and the provisions of chapter 51 of title 5 of such Code relating to classification, and compensated at a rate not exceeding the appropriate rate provided for individuals in grade GS-18 of the General Schedule under section 5332 of title 5 of such Code, as may be necessary to provide for the performance of such duties as may be prescribed by the Committee in connection with the exercise of its powers and functions under this Act.

(h) (1) The Committee shall render an annual report to the Secretary for submission to the Congress on or before January 31 in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, including the Program established under section 28, or with which the Committee in its official role as the private sector policy advisor of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, in which the Institute possess special competence, which could be used to assist United States enterprises and United States industrial joint research and development ventures.

(2) The Committee shall render to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

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SEC. 11. (REPEALED)

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SEC. 12. WORKING CAPITAL FUND (15 U.S.C. 278b)

(a) The National Institute of Standards and Technology is authorized to utilize in the performance of its functions' the Working Capital Fund established by the Act of June 29, 1950 (64 Stat. 275).

(b) The working capital of the fund shall be available for obligation and payment for any activities authorized by this chapter, and for any activities for which provision is made in the appropriations which reimburse the fund.

(c) In the performance of authorized activities, the Working Capital Fund shall be available and may be reimbursed for expenses of hire of automobile, hire of consultants, and travel to meetings, to the extent that such expenses are authorized for the appropriations of the Department of Commerce.

(d) The fund may be credited with advances and reimbursements, including receipts from non-Federal sources, for services performed under the authority of section 273 of this title.

(e) As used in this chapter, the term `cost' shall be construed to include directly related expenses and appropriate charges for indirect and administrative expenses.

(f) The amount of any earned net income resulting from the operation of the fund at the close of each fiscal year shall be paid into the general fund of the Treasury: Provided, That such earned net income may be applied to restore any prior impairment of the fund, and to ensure the availability of working capital necessary to replace equipment and inventories.

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SEC. 13. ACQUISITION OF LAND FOR FIELD SITES (15 U.S.C. 278c)

To the extent that funds are specifically appropriated therefor, the Secretary of Commerce is authorized to acquire land for such field sites as are necessary for the proper and efficient conduct of the activities authorized herein.

SEC. 14. CONSTRUCTION AND IMPROVEMENT OF BUILDINGS AND FACILITIES  
(15 U.S.C. 278d)

Within the limits of funds which are appropriated for the National Institute of Standards and Technology, the Secretary of Commerce is authorized to undertake such construction of buildings and other facilities and to make such improvements to existing buildings, grounds, and other facilities occupied or used by the National Institute of Standards and Technology as are necessary for the proper and efficient conduct of the activities authorized herein.

#### SEC. 15. FUNCTIONS AND ACTIVITIES (15 U.S.C. 278e)

In the performance of the functions of the National Institute of Standards and Technology the Secretary of Commerce is authorized to undertake the following activities:

- (a) the purchase, repair, and cleaning of uniforms for guards;
- (b) the care, maintenance, protection, repair, and alteration of Institute buildings and other plant facilities, equipment, and property;
- (c) the rental of field sites and laboratory, office, and warehouse space;
- (d) the purchase of reprints from technical journals or other periodicals and the payment of page charges for the publication of research papers and reports in such journals;
- (e) the furnishing of food and shelter without repayment therefore to employees of the Government at Arctic and Antarctic stations;
- (f) for the conduct of observations on radio propagation phenomena in the Arctic or Antarctic regions, the appointment of employees at base rates established by the Secretary of Commerce which shall not exceed such maximum rates as may be specified from time to time in the appropriation concerned, and without regard to the civil service and classification laws and sections 911-913, 921, and 922 of Title 5; and
- (g) the erection on leased property of specialized facilities working and living quarters when the Secretary of Commerce determines that this will best serve the interests of the Government; and
- (h) the provision of transportation services for employees of the Institute between the facilities of the Institute and nearby public transportation, notwithstanding section 1344 of title 31, United States Code.

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#### SEC. 16. FIRE RESEARCH (15 U.S.C. 278f)



There is hereby established within the Department of Commerce a Fire Research Center which shall have the mission of performing and supporting research on all aspects of fire with the aim of providing scientific and technical knowledge applicable to the prevention and control of fires.

The content and priorities of the research program shall be determined in consultation with the Administrator of the United States Fire Administration. In implementing this section, the Secretary is authorized to conduct, directly or through contracts or grants, a fire research program, including--

(1) basic and applied fire research for the purpose of arriving at an understanding of the fundamental processes underlying all aspects of fire. Such research shall include scientific investigations of--

(A) the physics and chemistry of combustion processes;

(B) the dynamics of flame ignition, flame spread, and flame extinguishment;

(C) the composition of combustion products developed by various sources and under various environmental conditions;

(D) the early stages of fires in buildings and other structures, structural subsystems and structural components in all other types of fires, including, but not limited to, forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires, with the aim of improving early detection capability;

(E) the behavior of fires involving all types of buildings and other structures and their contents (including mobile homes and highrise buildings, construction materials, floor and wall coverings, coatings, furnishings and other combustible materials), and all other types of fires, including forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires;

(F) the unique fire hazards arising from the transportation and use, in industrial and professional practices, of combustible gases, fluids, and materials;

(G) design concepts for providing increased fire safety consistent with habitability, comfort, and human impact in buildings and other structures; and

(H) such other aspects of the fire process as may be deemed useful in pursuing the objectives of the fire research program;

(2) research into the biological, physiological, and psychological factors affecting human victims of fire, and the performance of individual members of fire services, including--

(A) the biological and physiological effects of toxic substances encountered in fires;

- (B) the trauma, cardiac conditions, and other hazards resulting from exposure to fire;
  - (C) the development of simple and reliable tests for determining the cause of death from fires;
  - (D) improved methods of providing first aid to victims of fires;
  - (E) psychological and motivational characteristics of persons who engage in arson, and the prediction and cure of such behavior;
  - (F) the conditions of stress encountered by firefighters, the effects of such stress, and the alleviation and reduction of such conditions;
  - (G) design concepts for providing increased fire safety consistent with habitability, comfort, and human impact in buildings and other structures;
  - (H) such other aspects of the fires program as may be deemed useful in pursuing the objectives of the fire research program; and
  - (I) methods, procedures, and equipment for arson prevention, detection and investigation;
- (3) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

The Secretary shall insure that the results and advances arising from the work of the research program are disseminated broadly. He shall encourage the incorporation, to the extent applicable and practicable, of such results and advances in building codes, fire codes, and other relevant codes, test methods, fire service operations and training, and standards. The Secretary is authorized to encourage and assist in the development and adoption of uniform codes, test methods, and standards aimed at reducing fire losses and costs of fire protection.

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#### SEC. 17. INTERNATIONAL ACTIVITIES (15 U.S.C. 278g)

- (a) The Secretary is authorized, notwithstanding any other provision of law, to expend such sums, within the limit of appropriated funds, as the Secretary may deem desirable, through the grant of fellowships or any other form of financial assistance, to defray the expenses of foreign nationals not in service to the Government of the United States while they are performing scientific or engineering work at the National Institute of Standards and Technology or participating in the exchange of scientific or technical information at the National Institute of Standards and Technology.
- (b) The Congress consents to the acceptance by employees of the National Institute of Standards and Technology of fellowships, lectureships, or other positions for the performance of scientific

or engineering activities or for the exchange of scientific or technical information, offered by a foreign government, and to the acceptance and retention by an employee of the National Institute of Standards and Technology of any form of financial or other assistance provided by a foreign government as compensation for or as a means of defraying expenses associated with the performance of scientific or engineering activities or the exchange of scientific or technical information, in any case where the acceptance of such fellowship, lectureship, or position or the acceptance and retention of such assistance is determined by the Secretary to be appropriate and consistent with the interests of the United States. For the purposes of this subsection, the definitions appearing in section 7342(a) of title 5 of the United States Code apply. Civil actions may be brought and penalties assessed against any employee who knowingly accepts and retains assistance from a foreign government not consented to by this subsection in the same manner as is prescribed by section 7342(h) of title 5 of the United States Code.

(c) Provisions of law prohibiting the use of any part of any appropriation for the payment of compensation to any employee or officer of the Government of the United States who is not a citizen of the United States shall not apply to the payment of compensation to scientific or engineering personnel of the National Institute of Standards and Technology.

(d) For any scientific and engineering disciplines for which there is a shortage of suitably qualified and available United States citizens and nationals, the Secretary is authorized to recruit and employ in scientific and engineering fields at the Institute foreign nationals who have been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act and who intend to become United States citizens. Employment of a person under this paragraph shall not be subject to the provisions of title 5, United States Code, governing employment in the competitive service, or to any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them.

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#### SEC. 18. RESEARCH FELLOWSHIPS (15 U.S.C. 278g-1)

The Director is authorized to expend up to 1 per centum of the funds appropriated for activities of the National Institute of Standards and Technology in any fiscal year, as the Director may deem desirable, for awards of research fellowships and other forms of financial assistance to students at institutions of higher learning within the United States who show promise as present or future contributors to the mission of the Institute, and to United States citizens for research and technical activities on Institute programs. The selection of persons to receive such fellowships and assistance shall be made on the basis of ability and of the relevance of the proposed work to the mission and programs of the Institute.

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#### SEC. 19. POST-DOCTORAL FELLOWSHIP PROGRAM (15 U.S.C. 278g-2)

The National Institute of Standards and Technology, in conjunction with the National Academy of Sciences, shall establish and conduct a post-doctoral fellowship program, subject to the availability of appropriations, which shall be organized and carried out in substantially the same manner as the National Academy of Sciences/National Research Council Post-Doctoral Research Associate Program that was in effect prior to 1986, and which shall include not less than twenty nor more than 60 new fellows per fiscal year.

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#### SEC. 19A. TEACHER SCIENCE AND TECHNOLOGY ENHANCEMENT INSTITUTE PROGRAM (15 U.S.C. 278g-2a.)

(a) The Director shall establish within the Institute a teacher science and technology enhancement program to provide for professional development of mathematics and science teachers of elementary, middle, and secondary schools (as those terms are defined by the Director), including providing for the improvement of those teachers with respect to the understanding of science and the impacts of science on commerce.

“(b) In carrying out the program under this section, the Director shall focus on the areas of—

- “(1) scientific measurements;
- “(2) tests and standards development;
- “(3) industrial competitiveness and quality;
- “(4) manufacturing;
- “(5) technology transfer; and
- “(6) any other area of expertise of the Institute that the Director determines to be appropriate.

“(c) The Director shall develop and issue procedures and selection criteria for participants in the program.

“(d) The program under this section shall be conducted on an annual basis during the summer months, during the period of time when a majority of elementary, middle, and secondary schools have not commenced a school year.

“(e) The program shall provide for teachers’ participation in activities at the laboratory facilities of the Institute, or shall utilize other means of accomplishing the goals of the program as determined by the Director, which may include the Internet, video conferencing and recording, and workshops and conferences.”.

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#### SEC. 20. COMPUTER STANDARDS PROGRAM (15 U.S.C. 278g-3)

(a) Development of standards, guidelines, methods and techniques for computer systems

The National Institute of Standards and Technology shall--

(1) have the mission of developing standards, guidelines, and associated methods and techniques for computer systems;

(2) except as described in paragraph (3) of this subsection (relating to security standards), develop uniform standards and guidelines for Federal computer systems, except those systems excluded by section 2315 of Title 10, or section 3502(2) of Title 44;

(3) have responsibility within the Federal Government for developing technical, management, physical, and administrative standards and guidelines for the cost-effective security and privacy of sensitive information in Federal computer systems except--

(A) those systems excluded by section 2315 of Title 10, or section 3502(2) of Title 44; and

(B) those systems which are protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy, the primary purpose of which standards and guidelines shall be to control loss and unauthorized modification or disclosure of sensitive information in such systems and to prevent computer-related fraud and misuse;

(4) submit standards and guidelines developed pursuant to paragraphs (2) and (3) of this subsection, along with recommendations as to the extent to which these should be made compulsory and binding, to the Secretary of Commerce for promulgation under section 759(d) of Title 40;

(5) develop guidelines for use by operators of Federal computer systems that contain sensitive information in training their employees in security awareness and accepted security practice, as required by section 5 of the Computer Security Act of 1987; and

(6) develop validation procedures for, and evaluate the effectiveness of, standards and guidelines developed pursuant to paragraphs (1), (2), and (3) of this subsection through research and liaison with other government and private agencies.

(b) Technical assistance and implementation of standards developed

In fulfilling subsection (a) of this section, the National Institute of Standards and Technology is authorized--

(1) to assist the private sector, upon request, in using and applying the results of the programs and activities under this section;

(2) to make recommendations, as appropriate, to the Administrator of General Services on policies and regulations proposed pursuant to section 759(d) of Title 40;

(3) as requested, to provide to operators of Federal computer systems technical assistance in implementing the standards and guidelines promulgated pursuant to section 759(d) of Title 40;

(4) to assist, as appropriate, the Office of Personnel Management in developing regulations pertaining to training, as required by section 5 of the Computer Security Act of 1987;

(5) to perform research and to conduct studies, as needed, to determine the nature and extent of the vulnerabilities of, and to devise techniques for the cost-effective security and privacy of sensitive information in Federal computer systems; and

(6) to coordinate closely with other agencies and offices (including, but not limited to, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, the Office of Technology Assessment, and the Office of Management and Budget)--

(A) to assure maximum use of all existing and planned programs, materials, studies, and reports relating to computer systems security and privacy, in order to avoid unnecessary and costly duplication of effort; and

(B) to assure, to the maximum extent feasible, that standards developed pursuant to subsection (a)(8) and (5) are consistent and compatible with standards and procedures developed for the protection of information in Federal computer systems which is authorized under criteria established by Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

(c) Protection of sensitive information

For the purposes of--

(1) developing standards and guidelines for the protection of sensitive information in Federal computer systems under subsections (a)(1) and (a)(3), and

(2) performing research and conducting studies under subsection (b)(5),

the National Institute of Standards and Technology shall draw upon computer system technical security guidelines developed by the National Security Agency to the extent that the National Institute of Standards and Technology determines that such guidelines are consistent with the requirements for protecting sensitive information in Federal computer systems.

(d) Definitions

As used in this section--

(1) the term "computer system"--

(A) means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information; and

(B) includes--

- (i) computers;
- (ii) ancillary equipment;
- (iii) software, firmware, and similar procedures;
- (iv) services, including support services; and
- (v) related resources as defined by regulations issued by the

Administrator for General Services pursuant to section 759 of Title 40;

(2) the term "Federal computer system"--

(A) means a computer system operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer system) on behalf of the Federal Government to accomplish a Federal function; and

(B) includes automatic data processing equipment as that term is defined in section 759(a)(2) of Title 40;

(3) the term "operator of a Federal computer system" means a Federal agency contractor of a Federal agency, or other organization that processes information using a computer system on behalf of the Federal Government to accomplish a Federal function;

(4) the term "sensitive information" means any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of Title 5 (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; and

(5) the term "Federal agency" has the meaning given such term by section 472(b) of Title 40.

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SEC. 21. COMPUTER SYSTEM SECURITY AND PRIVACY ADVISORY BOARD  
(15 U.S.C. 278g-4)

(a) Establishment and composition

There is hereby established a Computer System Security and Privacy Advisory Board within the Department of Commerce. The Secretary of Commerce shall appoint the chairman of the Board. The Board shall be composed of twelve additional members appointed by the Secretary of Commerce as follows:

(1) four members from outside the Federal Government who are eminent in the computer or telecommunications industry, at least one of whom is representative of small or medium sized companies in such industries;

(2) four members from outside the Federal Government who are eminent in the fields of computer or telecommunications technology, or related disciplines, but who are not employed by or representative of a producer of computer or telecommunications equipment; and

(3) four members from the Federal Government who have computer systems management experience, including experience in computer systems security and privacy, at least one of whom shall be from the National Security Agency.

(b) Duties

The duties of the Board shall be--

(1) to identify emerging managerial, technical, administrative, and physical safeguard issues relative to computer systems security and privacy;

(2) to advise the National Institute of Standards and Technology and the Secretary of Commerce on security and privacy issues pertaining to Federal computer systems; and

(3) to report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

(c) Term of office

The term of office of each member of the Board shall be four years, except that--

(1) of the initial members, three shall be appointed for terms of one year, three shall be appointed for terms of two years, three shall be appointed for terms of three years, and three shall be appointed for terms of four years; and

(2) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed.



## (d) Quorum

The Board shall not act in the absence of a quorum, which shall consist of seven members.

## (e) Allowance for travel expenses

Members of the Board, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise performing duties at the request of the Board Chairman while away from their homes or a regular place of business, may be allowed travel expenses in accordance with subchapter 1 of chapter 57 of Title 5 [5 U.S.C.A. 5701 et seq.].

## (f) Staff services and utilization of federal personnel

To provide the staff services necessary to assist the Board in carrying out its functions, the Board may utilize personnel from the National Institute of Standards and Technology or any other agency of the Federal Government with the consent of the head of the agency.

## (g) Definitions

As used in this section, the terms "computer system" and "Federal computer system" have the meanings given in section 20(d) of this Act.

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## SEC. 22. MULTIYEAR APPROPRIATION AUTHORITY (15 U.S.C. 278h)

Appropriations to carry out the provisions of this chapter may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations.

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## SEC. 23. REPORTS TO CONGRESS (15 U.S.C. 278(i))

(a) The Director shall keep the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives fully and currently informed with regard to all of the activities of the Institute.

(b) The Director shall justify in writing all changes in policies regarding fees for standard reference materials and calibration services occurring after June 30, 1987, including a description of the anticipated impact of any proposed changes on demand for and anticipated revenues from the materials and services. Changes in policy and fees shall not be effective unless and until the Director has submitted the proposed schedule and justification to the Congress and 30 days on which both House of Congress are in session have elapsed since such submission, except that the requirement of this sentence shall not apply with respect to adjustments which are based solely on changes in the costs of raw materials or of producing and delivering standard reference materials or calibration services.

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(c) Notice of reprogramming (15 U.S.C. 278(p))

If any funds authorized for carrying out this chapter are subject to a reprogramming action that requires notice to be provided to the Appropriations Committees of the House of Representatives and the Senate, notice of such action shall concurrently be provided to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

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(b) Notice of reorganization (15 U.S.C. 278(p))

(1) Requirement

The Secretary shall provide notice to the Committees on Science and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, not later than 15 days before any major reorganization of any program, project, or activity of the Institute.

(2) ``Major reorganization" defined

For purposes of this subsection, the term ``major reorganization" means any reorganization of the Institute that involves the reassignment of more than 25 percent of the employees of the Institute.

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(Mar. 3, 1901, ch. 872, Sec. 31, as added Pub. L. 105-309, Sec. 4(b), Oct. 30, 1998, 112 Stat. 2935.)

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SEC. 24. STUDIES BY THE NATIONAL RESEARCH COUNCIL (15 U.S.C. 278j)

The Director may periodically contract with the National Research Council for advice and studies to assist the Institute to serve United States industry and science. The subjects of such advice and studies may include--

(1) the competitive position of the United States in key areas of manufacturing and emerging technologies and research activities which would enhance that competitiveness;

(2) potential activities of the Institute, in cooperation with industry and the States, to assist in the transfer and dissemination of new technologies for manufacturing and quality assurance; and

(3) identification and assessment of likely barriers to widespread use of advanced manufacturing technology by the United States workforce, including training and other initiatives which could lead to a higher percentage of manufacturing jobs of United States companies being located within the borders of our country.

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#### SEC. 25. REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY (15 U.S.C. 278k)

(a) The Secretary, through the Director and, if appropriate, through other officials, shall provide assistance for the creation and support of Regional Centers for the Transfer of Manufacturing Technology (hereafter in this Act referred to as the 'Centers'). Such centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies for and is awarded financial assistance under this section in accordance with the description published by the Secretary in the Federal Register under subsection (c)(2). Individual awards shall be decided on the basis of merit review. The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through--

(1) the transfer of manufacturing technology and techniques developed at the Institute to Centers and, through them, to manufacturing companies throughout the United States;

(2) the participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, the Institute in cooperative technology transfer activities;

(3) efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

(4) the active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small- and medium-sized manufacturing companies; and

(5) the utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than the Institute.

(b) The activities of the Centers shall include--

(1) the establishment of automated manufacturing systems and other advanced production technologies, based on research by the Institute, for the purpose of demonstrations and technology transfer;

(2) the active transfer and dissemination of research findings and Center expertise to a wide range of companies and enterprises, particularly small- and medium-sized manufacturers; and

(3) loans, on a selective, short-term basis, of items of advanced manufacturing equipment to small manufacturing firms with less than 100 employees.

(c) (1) The Secretary may provide financial support to any Center created under subsection (a) for a period not exceed six years. The Secretary may not provide to a Center more than 50 percent of the capital and annual operating and maintenance funds required to create and maintain such Center.

(2) The Secretary shall publish in the Federal Register within 90 days after the date of the enactment of this section, a draft description of a program for establishing Centers, including--

(A) a description of the program;

(B) procedures to be followed by applicants;

(C) criteria for determining qualified applicants;

(D) criteria, including those listed under paragraph (4), for choosing recipients of financial assistance under this section from among the qualified applicants; and

(E) maximum support levels expected to be available to Centers under the program in the fourth through sixth years of assistance under this section.

The Secretary shall publish a final description under this paragraph after the expiration of a 30-day comment period.

(3) Any nonprofit institution, or group thereof, or consortia of nonprofit institutions, including entities existing on the date of the enactment of this section, may submit to the Secretary an application for financial support under this subsection, in accordance with the procedures established by the Secretary and published in the Federal Register under paragraph

(2). In order to receive assistance under this section, an applicant shall provide adequate assurances that it will contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the last three years. Each applicant shall also submit a proposal for the allocation of the legal rights associated with any invention which may result from the proposed Center's activities.

(4) The Secretary shall subject each such application to merit review. In making a decision whether to approve such application and provide financial support under this subsection, the Secretary shall consider at a minimum (A) the merits of the application, particularly those portions of the application regarding technology transfer, training and education, and adaptation of manufacturing technologies to the needs of particular industrial sectors, (B) the quality of service to be provided, (C) geographical diversity and extent of service area, and (D) the percentage of funding and amount of in-kind commitment from other sources.

(5) Each Center which receives financial assistance under this section shall be evaluated during its third year of operation by an evaluation panel appointed by the Secretary. Each such evaluation panel shall be composed of private experts, none of whom shall be connected with the involved Center, and Federal officials. An official of the Institute shall chair the panel. Each evaluation panel shall measure the involved Center's performance against the objectives specified in this section. The Secretary shall not provide funding for the fourth through the sixth years of such Center's operation unless the evaluation is positive. If the evaluation is positive, the Secretary may provide continued funding through the sixth year at a declining levels. After the sixth year, a Center may receive additional financial support under this section if it has received a positive evaluation through an independent review, under procedures established by the Institute. Such an independent review shall be required at least every two years after the sixth year of operation. Funding received for a fiscal year under this section after the sixth year of operation shall not exceed one third of the capital and annual operating and maintenance costs of the Center under the program.

(6) The provisions of chapter 18 of title 35, United States Code, shall (to the extent not inconsistent with this section) apply to the promotion of technology from research by Centers under this section except for contracts for such specific technology extension or transfer services as may be specified by statute or by the Director.

(d) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Centers program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support Centers. Any Center which is supported with funds which originally came from other Federal departments and agencies shall be selected and operated according to the provisions of this section.

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SEC. 26. ASSISTANCE TO STATE TECHNOLOGY PROGRAMS (15 U.S.C. 2781)

(a) In addition to the Centers program created under section 25, the Secretary, through the Director and, if appropriate, through other officials, shall provide technical assistance to State technology programs throughout the United States, in order to help those programs help businesses, particularly small- and medium-sized businesses, to enhance their competitiveness through the application of science and technology.

(b) Such assistance from the Institute to State technology programs shall include, but not be limited to--

(1) technical information and advice from Institute personnel;

(2) workshops and seminars for State officials interested in transferring Federal technology to businesses; and

(3) entering into cooperative agreements when authorized to do so under this or any other Act.

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#### SEC. 27. NON-ENERGY INVENTIONS PROGRAM (15 U.S.C. 278m)

In conjunction with the initial organization of the Institute, the Director shall establish a program for the evaluation of inventions that are not energy-related to complement but not replace the Energy-Related Inventions Program established under section 14 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Public Law 93-577). The Director shall submit an initial implementation plan for this program to accompany the organization plan for the Institute. The implementation plan shall include specific cost estimates, implementation schedules, and mechanisms to help finance the development of technologies the program has determined to have potential. In the preparation of the plan, the Director shall consult with appropriate Federal agencies, including the Small Business Administration and the Department of Energy, State and local government organizations, university officials, and private sector organizations in order to obtain advice on how those agencies and organizations might cooperate with the expansion of this program of the Institute.

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#### SEC. 28. ADVANCED TECHNOLOGY PROGRAM (15 U.S.C. 278n)

(a) There is established in the Institute an Advanced Technology Program (hereafter in this Act referred to as the `Program') for the purpose of assisting United States businesses in creating and applying the generic technology and research results necessary to--

(1) commercialize significant new scientific discoveries and technologies rapidly; and

(2) refine manufacturing technologies.

The Secretary, acting through the Director, shall assure that the Program focuses on improving the competitive position of the United States and its businesses, gives preference to discoveries and to technologies that have great economic potential, and avoid providing undue advantage to specific companies. In operating the Program, the Secretary and Director shall, as appropriate, be guided by the findings and recommendations of the Biennial National Critical Technology Reports prepared pursuant to section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C.6683).

(b) Under the Program established in subsection (a), and consistent with the mission and policies of the Institute, the Secretary, acting through the Director, and subject to subsections (c) and (d), may--

(1) aid industry-led United States joint research and development ventures (hereafter in this section referred to as `joint ventures') (which may also include universities and independent research organizations), including those involving collaborative technology demonstration projects which develop and test prototype equipment and processes, through--

(A) provision of organizational and technical advice; and

(B) participation in such joint ventures, by means of grants, cooperative agreements, or contracts if the Secretary, acting through the Director, determines participation to be appropriate, which may include (i) partial start-up funding, (ii) provision of a minority share of the cost of such joint ventures for up to 5 years, and (iii) making available equipment, facilities, and personnel, provided that emphasis is placed on areas where the Institute has scientific or technological expertise, on solving generic problems of specific industries, and on making those industries more competitive in world markets;

(2) provide grants to and enter into contracts and cooperative agreements with United States businesses (especially small businesses), provided that emphasis is placed on applying the Institute's research, research techniques and expertise to those organizations' research programs;

(3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980; and

(4) carry out, in a manner consistent with the provisions of this section, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary.

(c) The Secretary, acting through the Director, is authorized to take all actions necessary and appropriate to establish and operate the Program, including--

(1) publishing in the Federal Register draft criteria and, no later than six months after the date of the enactment of this section, following a public comment period, final criteria, for the selection of recipients of assistance under subsection (b) (1) and (2);

(2) monitoring how technologies developed in its research program are used, and reporting annually to the Congress on the extent of any overseas transfer of these technologies;

(3) establishing procedures regarding financial reporting and auditing to ensure that contracts and awards are used for the purposes specified in this section, are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the Program.

(4) assuring that the advice of the Committee established under section 10 is considered routinely in carrying out the responsibilities of the Institute; and

(5) providing for appropriate dissemination of Program research results.

(d) When entering into contracts or making awards under subsection (b), the following shall apply:

(1) No contract or award may be made until the research project in question has been subject to a merit review, and has, in the opinion of the reviewers appointed by the Director and the Secretary, acting through the Director, been shown to have scientific and technical merit.

(2) In the case of joint ventures, the Program shall not make an award unless the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

(3) No federal contract or cooperative agreement under subsection (b)(2) shall exceed \$2,000,000 over 3 years, or be for more than 3 years unless a full and complete explanation of such proposed award, including reasons for exceeding these limits, is submitted in writing by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. The proposed contract or cooperative agreement may be executed only after 30 calendar days on which both Houses of Congress are in session have elapsed since such submission. Federal funds made



available under subsection (b)(2) shall be used only for direct costs and not for indirect costs, profits, or management fees of the contractor.

(4) In determining whether to make an award to a particular joint venture, the Program shall consider whether the members of the joint venture have made provisions for the appropriate participation of small United States businesses in such joint venture.

(5) Section 552 of title 5, United States Code, shall not apply to the following information obtained by the Federal Government on a confidential basis in connection with the activities of any business or any joint venture receiving funding under the Program--

(A) information on the business operation of any member of the business or joint venture; and

(B) trade secrets possessed by any business or any member of the joint venture.

(6) Intellectual property owned and developed by any business or joint venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program.

(7) If a business or joint venture fails before the completion of the period for which a contractor award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

(8) Upon dissolution of any joint venture or at the time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

(9) A company shall be eligible to receive financial assistance under this section only if--

(A) the Secretary finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

(B) either--

(i) the company is a United States-owned company; or

(ii) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(10) Grants, contracts, and cooperative assignments under this section shall be designed to support projects which are high risk and which have the potential for eventual substantial widespread commercial application. In order to receive a grant, contract, or cooperative agreement under this section, a research and development entity shall demonstrate to the Secretary the requisite ability in research and technology development and management in the project area in which the grant, contract, or cooperative agreement is being sought.

(11) (A) Title to any intellectual property arising from assistance provided under this section shall vest in a company or companies incorporated in the United States. The United States may reserve a nonexclusive, nontransferable, irrevocable paid-up license, to have practiced for or on behalf of the United States, in connection with any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property.

(B) For purposes of this paragraph, the term 'intellectual property' means an invention patentable under title 35, United States Code, or any patent on such an invention.

(C) Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(e) The Secretary may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under this section if the Secretary determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria set forth in subsection (d)(9), and that it is in the national interest of the United States to do so.

(f) When reviewing private sector requests for awards under the Program, and when monitoring the progress of assisted research projects, the Secretary and the Director shall, as appropriate, coordinate with the Secretary of Defense and other senior Federal officials to ensure cooperation and coordination in Federal technology programs and to avoid unnecessary duplication of effort.

The Secretary and the Director are authorized to work with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and other appropriate Federal officials to form interagency working groups or special project offices to coordinate Federal technology activities.

(g) In order to analyze the need for the value of joint ventures and other research projects in specific technical fields, to evaluate any proposal made by a joint venture or company requesting the Secretary's assistance, or to monitor the progress of any joint venture or any company research project which receives Federal funds under the Program, the Secretary, the Under Secretary of Commerce for Technology, and the Director may, notwithstanding any other provision of law, meet with such industry sources as they consider useful and appropriate.

(h) Up to 10 percent of the funds appropriated for carrying out this section may be used for standards development and technical activities by the Institute in support of the purposes of this section.

(i) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support awards under the Program. Any Program award which is supported with funds which originally came from other Federal departments and agencies shall be selected and carried out according to the provisions of this section.

(j) As used in this section--

(1) the term 'joint venture' means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of--

(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts;

(B) the development or testing of basic engineering techniques;

(C) the extension of investigative finding or theory of a scientific or technical nature into practical application for experimental and demonstration purposes including the experimental production and testing of models, prototypes, equipment, materials, and processes;

(D) the collection, exchange, and analysis of research information;

(E) the production of any product, process, or service; or

(F) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), and (E),

and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture; and

(2) the term 'United States-owned company' means a company that has majority ownership or control by individuals who are citizens of the United States.

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## SEC. 29. SAVINGS PROVISION (15 U.S.C. 278o)

All rules and regulations, determinations, standards, contracts, certifications, authorizations, delegations, results and findings of investigations, or other actions duly issued, made, or taken by or pursuant to this Act, or under the authority of any other statutes which resulted in the assignment of functions or activities to the Secretary, the Department, the Director, or the Institute, as are in effect immediately before the date of enactment of this section, and not suspended by the Secretary, the Director, the Institute or the courts, shall continue in full force and effect after the date of enactment of this section until modified or rescinded.

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## SEC. 30. USER FEES (15 U.S.C. 278p)

The Institute shall not implement a policy of charging fees with respect to the use of Institute research facilities by research associates in the absence of express statutory authority to charge such fees.

## SEC. 31. NOTICE OF REPROGRAMMING (15 U.S.C. 278p)

(a) If any funds authorized for carrying out this Act are subject to a reprogramming action that requires notice to be provided to the Appropriations Committees of the House of Representatives and the Senate, notice of such action shall concurrently be provided to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

### (b) NOTICE OF REORGANIZATION

(1) REQUIREMENT - The Secretary shall provide notice to the Committees on Science and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, not later than 15 days before any major reorganization of any program, project, or activity of the Institute.

(2) DEFINITION - For purposes of this subsection, the term 'major reorganization' means any reorganization of the Institute that involves the reassignment of more than 25 percent of the employees of the Institute.

## SEC. 32. POPULAR NAME (15 U.S.C. 271 note)

This Act may be cited as the National Institute of Standards and Technology Act.

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## II. OTHER MAJOR NIST NON-ORGANIC ACT LEGISLATION WHICH DOES NOT AUTHORIZE APPROPRIATIONS...

**This section includes legislation or pertinent portions of legislation of particular importance to NIST (other than the NIST Organic Act) which assign functions and responsibilities (not appropriations) to NIST directly or to the Secretary of Commerce who has delegated authority to NIST to perform those functions or responsibilities. Therefore, the statutes listed below do not include every item of legislation pertaining to NIST.**

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1. Literary and Scientific Collections Accessible to Investigators and Students (April 12, 1892, No. 8, 27 Stat. 395; 20 U.S.C. 91)

"The facilities for research and other governmental collections now existing or hereafter to be established in the city of Washington for the promotion of knowledge shall be accessible, under such rules and restrictions as the officers in charge of each collection may prescribe, subject to such authority as is now or may hereafter be permitted by law, to the scientific investigators and to students, duly qualified individuals and graduates of any institution of higher learning."

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2. Fair Packaging and Labeling Act [P.L. 89-755; 15 U.S.C. 1454(d) and (e), 1458(a)]

"Whenever the Secretary of Commerce determines that there is undue proliferation of the weights, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, he shall request manufacturer manufacturers, packers, and distributors of the commodity or commodities to participate in the development of a voluntary product standard for such commodity or commodities under the procedures for the development of voluntary products standards established by the Secretary pursuant to section 2 of the Act of March 3, 1901 (31 Stat. 1449, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation."

"If (1) after one year after the date on which the Secretary of Commerce first makes the request of manufacturers, packers, and distributors to participate in the development of a voluntary product standard as provided in subsection (d) of this section, he determines that such a standard will not be published pursuant to the provisions of such subsection (d), or (2) if such a standard is published and the Secretary of Commerce determines that it has not been observed, he shall promptly report such determination to the Congress with a statement of the efforts that have been made under the voluntary standards program and his recommendation as to whether Congress should enact legislation providing regulatory authority to deal with the situation in question."

"A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State Officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities."

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### 3. Standard Reference Data Act [P.L. 90-396; 15 U.S.C. 290-290f]

"The Congress hereby finds and declares that reliable standardized scientific and technical reference data are of vital importance to the progress of the Nation's science and technology. It is therefore the policy of the Congress to make critically evaluated reference data readily available to scientists, engineers, and the general public. It is the purpose of this Act to strengthen and enhance this policy."

"For the purposes of this Act--

The term `standard reference data' means quantitative information, related to a measurable physical or chemical property of a substance or system of substances of known composition and structure, which is critically evaluated as to its reliability under section 3 of this Act."

The term `Secretary' means the Secretary of Commerce.

"The Secretary is authorized and directed to provide or arrange for the collection, compilation, critical evaluation, publication, and dissemination of standard reference data. In carrying out this program, the Secretary shall, to the maximum extent practicable, utilize the reference data services and facilities of other agencies and instrumentalities of the Federal Government and of State and local governments, persons, firms, institutions, and associations, with their consent and in such a manner as to avoid duplication of those services and facilities. All agencies and instrumentalities of the Federal Government are encouraged to exercise their duties and functions in such manner as will assist in carrying out the purpose of this Act. This section shall be deemed complementary to existing authority, and nothing herein is intended to repeal, supersede, or diminish existing authority or responsibility of any agency or instrumentality of the Federal Government."

"To provide for more effective integration and coordination of standard-reference data activities, the Secretary, in consultation with other interested Federal agencies, shall prescribe and publish in the Federal Register such standards, criteria, and procedures for the preparation and publication of standard reference data as may be necessary to carry out the provisions of this Act."

"Standard reference data conforming to standards established by the Secretary may be made available and sold by the Secretary or by a person or agency designated by him. To the extent practicable and appropriate, the prices established for such data may reflect the cost of collection, compilation, evaluation, and publication, and dissemination of the data, including administrative expenses; and the amounts received shall be subject to the Act of March 3, 1901, as amended."

"Notwithstanding the limitations contained in section 105 of title 17 of the United States Code, the Secretary may secure copyright and renewal thereof on behalf of the United States as author or proprietor in all or any part of any standard reference data which he prepares or makes available under this Act, and may authorize the reproduction and publication thereof by others."

"The publication or republication by the Government under this Act, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such material without the consent of the copyright proprietor."

". . . Notwithstanding the provisions of any other law, no appropriations for any fiscal year may be made for the purpose of this Act after fiscal year 1969 unless previously authorized by legislation hereafter enacted by the Congress."

(Note - Since the enactment of the Standard Reference Data Act in 1969, the Congress has authorized the appropriation of certain sums for each fiscal year since that time to carry out the provisions of that Act.)

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#### 4. Radiation Control for Health and Safety Act of 1968 [P. L. 90-602; 42 U.S.C. 263d(6)]

"The Secretary (of Health and Human Services) shall establish and carry out an electronic product radiation control program designed to protect the public health and safety from electronic product radiation. As a part of such program, he shall--

... (6) consult and maintain liaison with the Secretary of Commerce . . . and other appropriate Federal departments and agencies on (A) techniques, equipment, and programs for testing and evaluation electronic product radiation, and (B) the development of performance standards pursuant to section 263f of this Act (42 U.S.C. 263f) to control such radiation emissions."

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5. Consumer Product Safety Act [P.L. 92-573; 15 U.S.C. 2078(d)]

"The (Consumer Product Safety) Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Institute of Standards and Technology, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission."

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6. Federal Nonnuclear Research and Development Act of 1974 [P.L. 93-577; 42 U.S.C. 5913]

"The National Institute of Standards and Technology shall give particular attention to the evaluation of all promising energy-related inventions, particularly those submitted by individual inventors and small companies for the purpose of obtaining direct grants from the Secretary of Energy. The National Institute of Standards and Technology is authorized to promulgate regulations in the furtherance of this section."

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7. Metric Conversion Act of 1975 [P.L. 94-168; 15 U.S.C. 205c and 205e]

"As used in this Act, the term--

... (4) 'metric system of measurement' means the International System of Units as established by the General Conference of Weights and Measures in 1960 and as interpreted or modified for the United States by the Secretary of Commerce."

"It shall be the function of the Board to devise and carry out a broad program of planning, coordination, and public education, consistent with other national policy and interests, with the aim of implementing the policy set forth in this Act. In carrying out this program, the Board shall--

... (7) assist the public through information and education programs, to become familiar with the meaning and applicability of metric terms and measures in daily life. Such programs shall include--



... (C) consultation by the Secretary of Commerce with the National Conference on Weights and Measures in order to assure that State and local weights and measures officials are (i) appropriately involved in metric conversion activities and (ii) assisted in their efforts to bring about timely amendments to weights and measures laws;"

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8. Earthquake Hazards Reduction Act of 1977 [P.L. 95-124; 42 U.S.C. 7702 and 7703(b)(3) (B) and (d)]

"It is the purpose of the Congress in this Act to reduce the risks of life and property from future earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards reduction program."

"(b) The President shall--

... (3) by rule, within 300 days after October 7, 1977--

... (B) assign and specify the role and responsibility of each appropriate Federal department, agency, and entity with respect to each object and element of the program;

... (d) In assigning the role and responsibility of Federal departments, agencies, and entities under subsection (b) (3)(B) of this section, the President shall, where appropriate, include the ... National Institute of Standards and Technology ... "

The Act mandated the development of a National Earthquake Hazards Reduction Program. A report on this program, which was forwarded by the President to the Congress in June 1978, contains a comprehensive approach to developing hazards reductions measures and establishes the roles for Federal, state and local governments, and the private sector. Under this program, the National Institute of Standards and Technology is required to "(1) assist and cooperate with the Department of Housing and Urban Development, other Federal agencies (particularly those involved in research), the National Institute of Building Sciences, professional organizations, model code groups, and state and local building departments, in continuing the development, testing and improvement of model seismic design and construction provisions suitable for incorporation in local codes, standards and practices, [and] (2) [conduct] research on performance criteria and supporting measurement technology for earthquake resistant construction." (Earthquake Hazards Reduction Program Implementation Plan, p. 23.)

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9. Trade Agreements Act of 1979 [P.L. 96-39; Title IV - Technical Barriers to Trade (Standards), 19 U.S.C. 2531-2573]

The purpose of the Trade Agreements Act of 1979 is to approve and implement the trade agreements negotiated under the Trade Act of 1974 (Pub. L. No. 93-618; 19 U.S.C. 2101-2487) and to foster and promote the growth and maintenance of an open world trading system. Title IV, Technical Barriers to Trade (Standards), of the Trade Agreements Act of 1979 deals with Federal standards-related activities and establish within the Department of Commerce a Standards Information Center. The Center is to serve as the central national collection facility for information relating to standards, certification systems, and standards-related activities. Under the Statements of Administrative Action for the Trade Agreements Act of 1979 [H.R. Doc. No. 153, 96th Cong. 1st Sess., pt. II, at 481, 487-490 (1979)], NIST is specified as the location in the Department of Commerce for the Center. The Statements of Administrative Action call for the NIST Standards Information Center to: serve as the inquiry point for all information on Federal standards-related activities; have in its collection one copy of all title, text and applicable rules of all international, Federal, state and private standards and certification systems; review the Federal Register for proposed Federal standards-related activities; maintain and review information on all standards-related activities; respond to all inquiries on standards-related activities; and provide copies of international, Federal, state and private standards and certification systems information for a reasonable fee, etc.

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#### 10. Structural Failures [P.L. 99-73, Sec. 7; 15 U.S.C. 281a]

The National Institute of Standards and Technology, on its own initiative but only after consultation with local authorities, may initiate and conduct investigations to determine the causes of structural failures in structures which are used or occupied by the general public. No part of any report resulting from such investigation shall be submitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report.

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#### 11. Malcolm Baldrige National Quality Improvement Act of 1987 [P.L. 100-107; 15 U.S.C. 3711a]

"(a) Establishment--There is hereby established the Malcolm Baldrige National Quality Award, which shall be evidenced by a medal bearing the inscriptions 'Malcolm Baldrige National Quality Award' and 'The Quest for Excellence'. The medal shall be of such design and materials and bear such additional inscriptions as the Secretary may prescribe.

#### (b) Making and Presentation of Award--

(1) The President (on the basis of recommendations received from the Secretary), or the Secretary, shall periodically make the award to companies and other organizations which in the judgment of the President or the Secretary have substantially benefited the economic or social well being of the United States through improvements in the quality of their goods or services

resulting from the effective practice of quality management, and which as a consequence are deserving of special recognition.

(2) The presentation of the award shall be made by the President or the Secretary with such ceremonies as the President or the Secretary may deem proper.

(3) An organization to which an award is made under this section, and which agrees to help other American organizations improve their quality management, may publicize its receipt of such award and use the award in its advertising, but it shall be ineligible to receive another such award in the same category for a period of 5 years.

(c) Categories in Which Award May be Given--

(1) Subject to paragraph (2), separate awards shall be made to qualifying organizations in each of the following categories --

- (A) Small businesses.
- (B) Companies or their subsidiaries.
- (C) Companies which primarily provide services.
- (D) Health care providers.
- (E) Education providers.

(2) The Secretary may at any time expand, subdivide, or otherwise modify the list of categories within which awards may be made as initially in effect under paragraph (1), and may establish separate awards for other organizations including units of government, upon a determination that the objectives of this section would be better served thereby; except that any such expansion, subdivision, modification, or establishment shall not be effective unless and until the Secretary has submitted a detailed description thereof to the Congress and a period of 30 days has elapsed since that submission.

(3) Not more than two awards may be made within any subcategory in any year unless the Secretary determines that a third award is merited and can be given at no additional cost to the Federal Government (and no award shall be made within any category or subcategory if there are no qualifying enterprises in that category or subcategory).

(d) Criteria for Qualification--

(1) An organization may qualify for an award under this section only if it--

- (A) applies to the Director of the National Institute of Standards and Technology in writing, for the award,

- (B) permits a rigorous evaluation of the way in which its business and other operations have contributed to improvements in the quality of goods and services, and
- (C) meets such requirements and specifications as the Secretary, after receiving recommendations from the Board of Overseers established under paragraph (2)(B) and the Director of the National Institute of Standards and Technology, determines to be appropriate to achieve the objectives of this section.

In applying the provisions of subparagraph (C) with respect to any organization, the Director of the National Institute of Standards and Technology shall rely upon an intensive evaluation by a competent board of examiners which shall review the evidence submitted by the organization and, through a site visit, verify the accuracy of the quality improvements claimed. The examination should encompass all aspects of the organization's current practice of quality management, as well as the organization's provision for quality management in its future goals. The award shall be given only to organizations which have made outstanding improvements in the quality of their goods or services (or both) and which demonstrate effective quality management through the training and involvement of all levels of personnel in quality improvement.

(2) (A) The Director of the National Institute of Standards and Technology shall, under appropriate contractual arrangements, carry out the Director's responsibilities under subparagraphs (A) and (B) of paragraph (1) through one or more broad-based nonprofit entities which are leaders in the field of quality management and which have a history of service to society.

(B) The Secretary shall appoint a board of overseers for the award, consisting of a least five persons selected for their preeminence in the field of quality management. This board shall meet annually to review the work of the contractor or contractors and make such suggestions for the improvement of the award process as they deem necessary. The board shall report the results of the award activities to the Director of the National Institute of Standards and Technology each year, along with its recommendations for improvement of the process.

(e) Information and Technology Transfer Program--The Director of the National Institute of Standards and Technology shall ensure that all program participants receive the complete results of their audits as well as detailed explanations of all suggestions for improvements. The Director shall also provide information about the awards and the successful quality improvement strategies and programs of the award-winning participants to all participants and other appropriate groups.

(f) Funding--The Secretary is authorized to seek and accept gifts from public and private sources to carry out the program under this section. If additional sums are needed to cover the full cost of

the program, the Secretary shall impose fees upon the organizations applying for the award in amounts sufficient to provide such additional sums.

(g) Report--The Secretary shall prepare and submit to the President and the Congress, within 3 years after the date of the enactment of this section, a report on the progress, findings, and conclusions of activities conducted pursuant to this section along with recommendations for possible modifications thereof."

## 12. NIST Authorization Act for Fiscal Year 1989 [P.L. 100-519, Sec. 109]

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### SEC. 109. TECHNOLOGY SERVICES (15 U.S.C. 272a)

In addition to such other technology services and technology extension activities which may be mandated or authorized by law, and in order to help improve the use of technology by small and medium-sized industrial firms within the United States, the Director of the National Institute of Standards and Technology, as appropriate shall, -

- (1) work directly with States, local governments, and other appropriate organizations to provide for extended distribution of Standard Reference Materials, Standard Reference Data, calibrations, and related technical services and to help transfer other expertise and technology to the States and to small businesses and other businesses within the States;
- (2) evaluate those inventions from small businesses or individuals which have a significant potential for improving competitiveness;
- (3) provide support for workshops on technical and entrepreneurial topics and share information developed through the Malcolm Baldrige Quality Awards Program; and
- (4) work with other Federal agencies to provide technical related assistance to the States and businesses within the States.

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### SEC. 112. INTERNATIONAL STANDARDS (15 U.S.C. 272 note)

- (a) PROGRAM - The Secretary, acting through the Director of the National Institute of Standards and Technology and other appropriate officials, shall seek funding for and establish, within 6 months after the date of the enactment of the Act, a program to assist other countries in the development of their domestic standards which are compatible with standards in general use in the United States. After the program is established, it shall be

funded through voluntary contributions from the private sector to fully reimburse the United States for expenses incurred during fiscal years 1989 and 1990. The program shall begin on a pilot basis focusing on one or two countries or groups of countries which are major United States trading partners and have expressed interest in such program. The Secretary shall ensure that contributions which are earmarked by country are spent to assist the development of standards by the country or group of countries.

(b) LONG TERM PLAN - No later than June 20, 1989, the Secretary shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a long-term plan for assistance under this section for each nation or group of nations which annually has imports of at least \$1,000,000,000 from the United States (or has the potential for being a major importer from the United States) and which desires such assistance. The plan shall include a description of the resources needed to provide such assistance, the appropriate and likely sources of such funds, and the appropriate relationship between the program established under this section and private sector standards organizations. Special consideration is to be given to the feasibility of establishing a data base and other methods for making standards information developed in cooperation with one country available to other countries.

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13. Federal Energy Management Improvement Act (Toy Gun Safety Act) [P.L. 100-615; 15 U.S.C. 5001]

Toy guns sold in commerce in the U.S. shall have an orange plug inserted on the barrel of such toy guns or look-alike or imitation firearms to distinguish the toys from real firearms. The Secretary of Commerce shall have the regulatory authority to provide other types of markings for toy guns or look-alike, imitation firearms when the orange plug is not feasible. NIST provides technical assistance to the Secretary of Commerce to carry out DOC's responsibilities under this act.

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14. Fastener Quality Act [P.L. 101-592 as amended by P.L. 104-113 and P.L. 105-234 and P.L. 106-34; 15 U.S.C. 5414]

To require that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured, to provide for accreditation of laboratories engaged in fastener testing, to require inspection, testing, and certification, in accordance with standardized methods, of fasteners used in critical applications to increase fastener quality and reduce the danger of fastener failure, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Fastener Quality Act."

## SECTION 2. FINDINGS.

The Congress finds that—

- (1) the United States fastener industry is a significant contributor to the global economy, employing thousands of workers in hundreds of communities;
- (2) the American economy uses billions of fasteners each year;
- (3) state-of-the-art manufacturing and improved quality assurance systems have dramatically improved fastener quality, so virtually all fasteners sold in commerce meet or exceed the consensus standards for the uses to which they are applied;
- (4) a small number of mismarked, misrepresented, and counterfeit fasteners do enter commerce in the United States; and
- (5) multiple criteria for the identification of fasteners exist, including grade identification markings and manufacturer's insignia, to enable purchasers and users of fasteners to accurately evaluate the characteristics of individual fasteners.

## SECTION 3. DEFINITIONS.

As used in this Act, the term—

(1) 'accredited laboratory' means a fastener testing facility used to perform end-of-line testing required by a consensus standard or standards to verify that a lot of fasteners conforms to the grade identification marking called for in the consensus standard or standards to which the lot of fasteners has been manufactured, and which—

(A) meets the requirements of ISO/IEC Guide 25 (or another document approved by the Director under section 10(c)), including revisions from time-to-time; and

(B) has been accredited by a laboratory accreditation body that meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under section 10(d)), including revisions from time-to-time;

(2) 'consensus standard' means the provisions of a document that describes fastener characteristics published by a consensus standards organization or a Federal agency, and does not include a proprietary standard;

(3) 'consensus standards organization' means the American Society for Testing and Materials, the American National Standards Institute, the American Society of Mechanical Engineers, the Society of Automotive Engineers, the International

Organization for Standardization, any other organization identified as a United States consensus standards organization or a foreign and international consensus standards organization in the Federal Register at 61 Fed. Reg. 50582–83 (September 26, 1996), and any successor organizations thereto;

(4) ‘Director’ means the Director of the National Institute of Standards and Technology;

(5) ‘distributor’ means a person who purchases fasteners for the purpose of reselling them at wholesale to unaffiliated persons within the United States (an original equipment manufacturer and its dealers shall be considered affiliated persons for purposes of this Act);

(6) ‘fastener’ means a metallic screw, nut, bolt, or stud having internal or external threads, with a nominal diameter of 6 millimeters or greater, in the case of such items described in metric terms, or 1/4 inch or greater, in the case of such items described in terms of the English system of measurement, or a load-indicating washer, that is through-hardened or rep-resented as meeting a consensus standard that calls for through-hardening, and that is grade identification marked or represented as meeting a consensus standard that requires grade identification marking, except that such term does not include any screw, nut, bolt, stud, or load-indicating washer that is—

(A) part of an assembly;

(B) a part that is ordered for use as a spare, substitute, service, or replacement part, unless that part is in a pack-age containing more than 75 of any such part at the time of sale, or a part that is contained in an assembly kit;

(C) produced and marked as ASTM A 307 Grade A, or a successor standard thereto;

(D) produced in accordance with ASTM F 432, or a successor standard thereto;

(E) specifically manufactured for use on an aircraft if the quality and suitability of those fasteners for that use has been approved—

(i) by the Federal Aviation Administration; or

(ii) by a foreign airworthiness authority as described in part 21.29, 21.500, 21.502, or 21.617 of title 14 of the Code of Federal Regulations;

(F) manufactured in accordance with a fastener quality assurance system; or

(G) manufactured to a proprietary standard, whether or not such proprietary standard directly or indirectly references a consensus standard or any portion thereof;

(7) ‘fastener quality assurance system’ means—

(A) a system that meets the requirements, including revisions from time-to-time, of—

(i) International Organization for Standardization (ISO) Standard 9000, 9001, 9002, or TS16949;

(ii) Quality System (QS) 9000 Standard;



(iii) Verband der Automobilindustrie e. V. (VDA) 6.1 Standard;

or

(iv) Aerospace Basic Quality System Standard AS9000; or

(B) any fastener manufacturing system—

(i) that has as a stated goal the prevention of defects through continuous improvement;

(ii) that seeks to attain the goal stated in clause (i) by incorporating—

(I) advanced quality planning;

(II) monitoring and control of the manufacturing process;

(III) product verification embodied in a comprehensive written control plan for product and process characteristics, and process controls (including process influence factors and statistical process control), tests, and measurement systems to be used in production; and

(IV) the creation, maintenance, and retention of electronic, photographic, or paper records required by the control plan regarding the inspections, tests, and measurements performed pursuant to the control plan; and

(iii) that—

(I) is subject to certification in accordance with the requirements of ISO/IEC Guide 62 (or another document approved by the Director under section 10(a)), including revisions from time-to-time, by a third party who is accredited by an accreditation body in accordance with the requirements of ISO/IEC Guide 61 (or another document approved by the Director under section 10(b)), including revisions from time-to-time; or

(II) undergoes regular or random evaluation and assessment by the end user or end users of the screws, nuts, bolts, studs, or load-indicating washers produced under such fastener manufacturing system to ensure that such system meets the requirements of clauses (i) and (ii);

(8) ‘grade identification marking’ means any grade-mark or property class symbol appearing on a fastener purporting to indicate that the lot of fasteners conforms to a specific consensus standard, but such term does not include a manufacturer’s insignia or part number;

(9) ‘importer’ means a distributor located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States;

(10) ‘lot’ means a quantity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer;

(11) ‘manufacturer’ means a person who fabricates fasteners for sale in commerce;

(12) ‘proprietary standard’ means the provisions of a document that describes characteristics of a screw, nut, bolt, stud, or load-indicating washer and is issued by a person who—

(A) uses screws, nuts, bolts, studs, or load-indicating washers in the manufacture, assembly, or servicing of its products; and

(B) with respect to such screws, nuts, bolts, studs, or washers, is a developer and issuer of descriptions that have characteristics similar to consensus standards and that bear such user’s identification;

(13) ‘record of conformance’ means a record or records for each lot of fasteners sold or offered for sale that contains—

(A) the name and address of the manufacturer;

(B) a description of the type of fastener;

(C) the lot number;

(D) the nominal dimensions of the fastener (including diameter and length of bolts or screws), thread form, and class of fit;

(E) the consensus standard or specifications to which the lot of fasteners has been manufactured, including the date, number, revision, and other information sufficient to identify the particular consensus standard or specifications being referenced;

(F) the chemistry and grade of material;

(G) the coating material and characteristics and the applicable consensus standard or specifications for such coating; and

(H) the results or a summary of results of any tests performed for the purpose of verifying that a lot of fasteners conforms to its grade identification marking or to the grade identification marking the lot of fasteners is represented to meet;

(14) ‘represent’ means to describe one or more of a fastener’s purported characteristics in a document or statement that is transmitted to a purchaser through any medium;

(15) ‘Secretary’ means the Secretary of Commerce;

(16) ‘specifications’ means the required characteristics identified in the contractual agreement with the manufacturer or to which a fastener is otherwise produced, except that the term does not include proprietary standards; and

(17) ‘through-harden’ means heating above the transformation temperature followed by quenching and tempering for the purpose of achieving uniform hardness.’’.

#### SECTION 4. SALE OF FASTENERS.

(a) GENERAL RULE.—It shall be unlawful for a manufacturer or distributor, in conjunction with the sale or offer for sale of fasteners from a single lot, to knowingly misrepresent or falsify—

(1) the record of conformance for the lot of fasteners;

(2) the identification, characteristics, properties, mechanical or performance marks, chemistry, or strength of the lot of fasteners; or

(3) the manufacturer's insignia.

(b) REPRESENTATIONS.—A direct or indirect reference to a consensus standard to represent that a fastener conforms to particular requirements of the consensus standard shall not be construed as a representation that the fastener meets all the requirements of the consensus standard.

(c) SPECIFICATIONS.—A direct or indirect contractual reference to a consensus standard for the purpose of identifying particular requirements of the consensus standard that serve as specifications shall not be construed to require that the fastener meet all the requirements of the consensus standard.

(d) USE OF ACCREDITED LABORATORIES.—In the case of fasteners manufactured solely to a consensus standard or standards, end-of-line testing required by the consensus standard or standards, if any, for the purpose of verifying that a lot of fasteners conforms with the grade identification marking called for in the consensus standard or standards to which the lot of fasteners has been manufactured shall be conducted by an accredited laboratory.''.

(b) EFFECTIVE DATE.—Subsection (d) of section 4 of the Fastener Quality Act, as added by subsection (a) of this section, shall take effect 2 years after the date of the enactment of this Act.

## SECTION 5. MANUFACTURERS' INSIGNIAS.

(a) GENERAL RULE.—Unless the specifications provide otherwise, fasteners that are required by the applicable consensus standard or standards to bear an insignia identifying their manufacturer shall not be offered for sale or sold in commerce unless—

(1) the fasteners bear such insignia; and

(2) the manufacturer has complied with the insignia recordation requirements established under subsection (b).

(b) RECORDATION. - The Secretary shall establish, by regulation, a program to provide for the recordation of the insignias of manufacturers described in subsection (a).

## SECTION 6. REMEDIES AND PENALTIES.

(a) CIVIL REMEDIES. - (1) The Attorney General may bring an action in an appropriate United States district court for appropriate declaratory and injunctive relief against any person who violates this Act or any regulation under this Act.

(2) An action under paragraph (1) may not be brought more than 10 years after the date on which the cause of action accrues.

(b) CIVIL PENALTIES.- (1) Any person who is determined by the Secretary, after notice and an opportunity for a hearing, to have violated this Act or any regulation under this Act shall be liable to the United States for a civil penalty of not more than \$25,000 for each violation.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(3) Any person against whom a civil penalty is assessed under paragraph (2) of this subsection may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The findings and order of the Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5, United states Code.

(4) The Secretary may arbitrate, compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section prior to referral to the Attorney General under paragraph (5).

(5) A civil penalty assessed under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) For the purpose of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) CRIMINAL PENALTIES. - (1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of this Act or a regulation under this Act shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

(d) ENFORCEMENT.- (1) The Secretary may designate officers or employees of the Department of Commerce to conduct investigations pursuant to this Act. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this Act, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

(2) The Secretary shall establish and maintain a hotline system to facilitate the reporting of alleged violations of this Act, and the Secretary shall evaluate allegations reported through that system and report any credible allegations to the Attorney General.

#### SECTION 7. RECORDKEEPING REQUIREMENTS.

Manufacturers and importers shall retain the record of conformance for fasteners for 5 years, on paper or in photographic or electronic format in a manner that allows for verification of authenticity. Upon request of a distributor who has purchased a fastener, or a person who has purchased a fastener for use in the production of a commercial product, the manufacturer or importer of the fastener shall make available information in the record of conformance to the requester.

#### SECTION 8. RELATIONSHIP TO STATE LAWS.

Nothing in this Act shall be construed to preempt any rights or causes of action that any buyer may have with respect to any seller of fasteners under the law of any State, except to the extent that the provisions of this Act are in conflict with such State law.

#### SECTION 9 CONSTRUCTION.

Nothing in this Act shall be construed to limit or otherwise affect the authority of any consensus standards organization to establish, modify, or withdraw any standards and specifications under any other law or authority in effect on the date of enactment of this Act.

#### SECTION 10 CERTIFICATION AND ACCREDITATION.

(a) **CERTIFICATION.**—A person publishing a document setting forth guidance or requirements for the certification of manufacturing systems as fastener quality assurance systems by an accredited third party may petition the Director to approve such document for use as described in section 3(7)(B)(iii)(I). The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 62.

(b) **ACCREDITATION.**—A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit third parties described in subsection (a) may petition the Director to approve such document for use as described in section 3(7)(B)(iii)(I). The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 61.

(c) **LABORATORY ACCREDITATION.**—A person publishing a document setting forth guidance or requirements for the accreditation of laboratories may petition the Director to approve such document for use as described in section 3(1)(A). The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 25.

(d) **APPROVAL OF ACCREDITATION BODIES.**—A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit laboratories may petition the Director to approve such document for use as described in section 3(1)(B). The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 58. In addition to any other voluntary laboratory accreditation programs that may be established by private sector persons, the Director shall establish a National Voluntary Laboratory Accreditation Program, for the accreditation of laboratories as described in section 3(1)(B), that meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under this subsection), including revisions from time-to-time.

(e) **AFFIRMATION.**—(1) An accreditation body accrediting third parties who certify manufacturing systems as fastener quality assurance systems as described in section 3(7)(B)(iii)(I) shall affirm to the Director that it meets the requirements of ISO/IEC Guide 61 (or another document approved by the Director under subsection (b)), including revisions from time-to-time.

(2) An accreditation body accrediting laboratories as described in section 3(1)(B) shall affirm to the Director that it meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under subsection (d)), including revisions from time-to-time.

(3) An affirmation required under paragraph (1) or (2) shall take the form of a self-declaration that the accreditation body meets the requirements of the applicable Guide, signed by an authorized representative of the accreditation body, without requirement for accompanying documentation. Any such affirmation shall be considered to be a continuous affirmation that the accreditation body meets the requirements of the applicable Guide, unless and until the affirmation is withdrawn by the accreditation body.

## SECTION 11. APPLICABILITY.

The requirements of this Act shall be applicable only to fasteners fabricated 180 days or more after the date of the enactment of the Fastener Quality Act Amendments Act of 1999, except that if a manufacturer or distributor of fasteners fabricated before that date prepares a record of conformance for such fasteners, representations about such fasteners shall be subject to the requirements of this Act.

## SECTION 12. COMPTROLLER GENERAL REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Congress a report describing any changes in industry practice resulting from or apparently resulting from the enactment of section 3(6)(B) of the Fastener Quality Act, as added by section 3 of this Act.

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15. Technology Administration Act of 1998 (P.L. 105-309; 15 U.S.C. 271 note)

## ENHANCEMENT OF SCIENCE AND MATHEMATICS PROGRAMS.

(a) DEFINITIONS—In this section—

(1) EDUCATIONALLY USEFUL FEDERAL EQUIPMENT—The term “educationally useful Federal equipment” means computers and related peripheral tools and research equipment that is appropriate for use in schools.

(2) SCHOOL—The term “school” means a public or private educational institution that serves any of the grades of kindergarten through grade 12.

(b) SENSE OF THE CONGRESS—

(1) IN GENERAL.—It is the sense of the Congress that the Director of the National Institute of Standards and Technology should, to the greatest extent practicable and in a manner consistent with applicable Federal law (including Executive Order No. 12999), donate educationally useful Federal equipment to schools in order to enhance the science and mathematics programs of those schools.

(2) REPORTS.—

(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Director of the National Institute of Standards and Technology shall prepare and submit to the President a report. The President shall submit the report to Congress at the same time as the President submits a budget request to Congress under section 1105(a) of title 31, United States Code.

(B) CONTENTS OF REPORT—The report prepared by the Director under this paragraph shall describe any donations of educationally useful Federal equipment to schools made during the period covered by the report.

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